



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding Wardlaw Manor 650005 BC Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC RR FF

### Introduction

This hearing dealt with the tenants' application for an order for repairs, an order that the landlord comply with the Act and a reduction in rent.

The hearing first convened on January 22, 2016. On that date the tenants stated that there was no issue at that time requiring a repair order. I therefore dismissed that portion of the tenants' application. Due to time limitations on the first hearing date, I was unable to hear from all of the witnesses and I adjourned the hearing. The hearing reconvened on March 21, 2016. I heard from the remaining witnesses and concluded the teleconference hearing.

In the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties and their witnesses were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Should I order the landlord to comply with the Act?  
Are the tenants entitled to a reduction in rent?

### Background and Evidence

The tenancy began on January 1, 2013. The rental unit is an apartment in an older multi-unit building. At the time of the hearing the tenants' monthly rent was \$1173.00. The building is heated by hot water heat and heat is included in rent. The rental unit is located above the boiler room for the building.

### *Tenants' Evidence*

The tenants have applied for compensation of \$9,649.05 for loss of quiet enjoyment. The tenants stated that beginning in February 2013 they heard intermittent rattling from the pipes in their apartment. The tenants stated that the noise would vary in tempo, frequency and volume, and it occurred more frequently at night. The tenants stated that the noise frequently interrupted their sleep.

The tenants stated that they first complained to the building manager on February 1, 2013, and since that time they made regular complaints to the manager and the owner. The tenants stated that on October 8, 2015 they sent a formal complaint letter to the owner. The tenants stated that after they filed their application the landlord installed bleed valves to prevent the banging and since December 1, 2015 there has been almost no noise.

The tenants calculated their claim of reduced rent to reflect disruption of quiet enjoyment of 100 percent of the apartment space for 50 percent of the time (prevention and interruption in sleeping hours) and 10 percent for less aggravating losses of quiet enjoyment during waking hours. The tenants requested a lower percentage where they believed the owner and manager were attempting to find solutions. They also requested a further rent reduction, going forward, of 80 percent of their rent until the problem was solved. The total monetary amount the tenants have claimed for February 2013 to November 2015 is \$9,649.05.

### *Landlord's Response*

The landlord stated that neither the previous tenants in the rental unit nor other tenants in the building had complaints about the noises the tenants have reported. Two agents of the landlord stated that they attended at the rental unit several times but never heard any rattling. The landlord stated that the tenants would communicate by email or text messages and the landlord would promptly respond. The landlord stated that they did not receive written notice from the tenants until October 2015. The landlord

acknowledged that they did not tell the tenants that there was any problem with sending their complaints by text message.

The landlord stated that they brought in several experts in plumbing to find out if there was a problem and if so how to fix it. The landlord called as witnesses three plumbers who attended at the building. The first witness, PH, has been coming to the building for approximately two years. PH stated that pipes move and expand and contract, so you may hear some noise as a result. The second witness, TL, attended at the building approximately 10 times over several years and he attended at the tenants' unit three times. TL stated that older buildings with hot water heat all make noise. The third witness, CM, stated that he was called to inspect the heating system but he did not hear any banging on that date. CM stated that banging noises would not come from the pipes but from a malfunctioning pump. CM stated that he inspected and there was nothing wrong with the pump.

The landlord submitted that they have been duly diligent in responding to the tenants' complaints. The landlord stated that they have spent over \$10,000.00 on this issue. The landlord submitted that the tenants have applied for compensation for long periods of time when they did not make any complaints of noise.

### Analysis

I find that the tenants did suffer some loss of quiet enjoyment due to banging or rattling noises.

The landlord's evidence that previous tenants did not complain does not prove that there was no noise, only that those tenants did not complain about noise. The landlord's witnesses, whom the landlord described as "experts in plumbing," stated that hot water heating likely causes noises in older buildings. I find it likely, based on the evidence before me, that during the months when the heat was turned on there were intermittent noises in the tenants' unit, and those noises were likely audible to the tenants because their unit is located above the boiler room.

I accept the tenants' evidence, as set out in their testimony as well as the complaints they sent to the landlord, that the noises did disturb them and cause them a loss of quiet enjoyment. However, it is also clear from the evidence that the landlord did take steps to investigate the tenants' complaints, and there were long periods of time when the tenants did not have any complaints.

The landlord responded to the tenants' email and text messages and did not require the tenants to make complaints in another format, and I therefore find that the landlord was put on notice of the complaints before their letter of October 2015. I also find it more likely than not that the landlord was not motivated to find a lasting solution to the problem until after the tenants filed their application for a rent reduction.

The landlord had a responsibility to mitigate the tenants' loss of quiet enjoyment, but the tenants also had a responsibility to mitigate. It was open to the tenants to apply for dispute resolution far sooner than before three years had passed, but they did not. The evidence shows that there were long periods of time where the tenants did not notify the landlord of any problems, and I do not find it likely that the noise occurred during the months that the heat was turned off.

Further, the tenants did not provide sufficient evidence to support their claim that they suffered a loss of their quiet enjoyment for 50 percent of every day of the months claimed and I find the tenants' calculations to be greatly exaggerated.

Finally, although the right to quiet enjoyment is a portion of what the tenants are entitled to under their tenancy agreement, they are also entitled to and have enjoyed use of numerous services and facilities, such as their bathroom and kitchen facilities. For these reasons, I find that the tenants are only entitled to a nominal award of \$500.00.

As the problem was solved in December 2015, the tenants are not entitled to any reduction in rent.

As the tenants' application was partly successful, and as it appears that the application motivated the landlord to finally solve the problem, I find that the tenants are entitled to partial recovery of their filing fee, in the amount of \$50.00.

### Conclusion

The tenants are entitled to compensation of \$550.00. They may deduct this amount from their next month's rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 19, 2016

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Residential Tenancy Branch